

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 03.02.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(NPD)No.3157 of 2007**

N.Rajagopal Reddy ... Petitioner

**Vs.**

Venkatalatchumiamma ...Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and decree dated 02.04.2007 made in G.No.61 of 2007 on the file of the learned District Munsif Cum Judicial Magistrate, Denkanikottai.

For Petitioner : M/s.Selvi George

For Respondent : No Appearance

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**ORDER**

The plaintiff is the revision petitioner, challenging the order rejecting the plaint made by the learned District Munsif Cum Judicial Magistrate, Denkanikottai, in General Number (CFR No).61 of 2007

dated 02.04.2007.

2.The revision petitioner as plaintiff filed the suit against the respondent herein for the relief of specific performance before the learned District Munsif Court at Thenkanikottai. The Learned Trial Judge before numbering the suit, has rejected the plaint on the ground that the suit was barred by limitation, holding that though the plaintiff paid additional sale consideration which was also endorsed in the backside of the sale agreement, but time to complete the contract mentioned in the original sale agreement was not extended. Hence, the Learned Trial Judge held that the above suit was barred by limitation and thereby rejected the plaint under Order VII, Rule 11 of CPC. Challenging the same the present Civil Revision Petition is filed.

3.I heard M/s.Selvi George, learned counsel appearing for the petitioner and there was no representation on behalf of the respondent and perused the materials available on record.

4.It is the contention of the Learned Counsel for revision petitioner that the revision petitioner entered into an agreement of sale with the respondent herein on 15.06.2000 and paid an advance

amount of Rs.25000/-, out of total sale consideration amount of Rs.52,500/-. Out of balance sale consideration of Rs.27,500/-, the revision petitioner paid Rs.15,000/- on 10.06.2001 and subsequently on 01.06.2004 the revision petitioner paid Rs.11,500/- to the respondent herein and the same were also reduced into writing in the presence of witnesses on the back side of the sale agreement. Since the respondent herein failed to execute the sale deed, the petitioner herein filed the above suit for specific performance in the month of January 2007 which is well within the period of 3 years.

5.It is the further contention of the Learned Counsel for the revision petitioner that the Learned Trial Judge erred in holding that though additional sale consideration was paid on two occasion and lastly it was paid on 01.06.2004, but one year time mentioned in the sale agreement to perform the contract was not extended at the time of payment of additional sale consideration by the revision petitioner. The said finding of the trial court is illegal and unsustainable in law, for the reason that it is always presumed that the time is extended when additional payment is made and endorsement was also made to that effect. The said contention of learned Counsel for revision petitioner is acceptable and found to be correct principle of law. Further, in the

considered opinion this Court, the question of limitation is mixed question of the fact and law and the same could be decided only after conducting full fledged trial. Though it is the discretion of court to decide the question of limitation as preliminary issue, in this case the learned Trial judge has not even numbered the suit and therefore in my considered view, the order impugned in this Civil Revision Petition is liable to be set aside as the same is not proper in the eye of law.

6. That apart, in the present case on hand it is the submission of the learned Counsel for revision petitioner that the suit is well within time, since the last payment was made on 01.06.2004 and the suit was filed in the month of January 2007. Therefore the said contention of Learned Counsel for the revision petitioner has to be decided only at the time of trial, not at the threshold itself.

7. In view of the enunciation of facts and law discussed above I am inclined to allow this Civil Revision Petition with the following direction.

8. In the result:

(a) this Civil Revision Petition is allowed and order and decree

made in General Number (CFR.No).61 of 2007 dated 02.04.2007 on the file of the learned District Munsif cum Judicial Magistrate, Denkanikottai is hereby set aside;

(b) the Learned Trial Judge is directed to number the suit and dispose the same by issuing summon to the defendant by following the procedure adumbrated in the Code of Civil Procedure within a period of one year from the date of receipt of a copy of this order. No costs.

**03.02.2017**

Note: Issue order copy on 13.12.2018

Index: Yes/No.

Internet: Yes/No.

vs

To

The District Munsif Cum Judicial Magistrate,  
Thenkanikottai.

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**M.V.MURALIDARAN, J.**

VS



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